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JUL 01 2010

OFFICE OF PETITIONS

In re Application of	:	
Shin-Jen Shiao	:	
Application No.: 10/554,315	:	ON PETITION
Filed: October 24, 2005	:	
Attorney Docket No.: JA-SHIAO-US-1	:	

This is a decision in response to the communication, filed May 10, 2010, which is being treated under the provisions of 37 CFR 1.181 (no fee) to withdraw the holding of abandonment.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed August 28, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 29, 2007. A Notice of Abandonment was mailed on June 23, 2008. In response, on May 10, 2010, the present petition was filed.

Petitioner explains that the "attorney did not give the applicant any notice from USPTO about the application."

It is initially pointed out that the Patent and Trademark Office is not the proper forum for resolving disputes between applicant and his representative. See Ray v. Lehman, 55 F.3d 606, 34 USPQ2d 1786 (Fed. Cir. 1995). Applicant is bound by the consequences of the actions or inactions of his duly authorized and voluntarily chosen representative. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Houston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987).

Pursuant to 35 U.S.C. 133, "[u]pon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the application, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to satisfactory of the Director that such delay was unavoidable.

Therefore, without an acceptable reply, the application became abandoned by operation of law. The abandonment may be overcome upon the filing of a grantable petition to revive under the provisions of 37 CFR 1.137(a) or 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

A copy of the Restriction Requirement mailed August 28, 2007 and a copy of the forms for filing a petition to revive under the provisions of 37 CFR 1.137(a) and 37 CFR 1.137(b) accompanies this decision for petitioner’s convenience.

It is noted that the petition is signed by the inventor, Shin-jen Shaio; however, petitioner has appointed a representative to conduct all business before the U.S. Patent and Trademark Office (Office). The Office does not engage in dual correspondence with petitioner and petitioner’s representative. Accordingly, petitioner must conduct all future correspondence with this Office through the representative of record. If petitioner no longer wishes to be represented by the representative of record, then a revocation of the power of attorney or patent agent should be submitted. While a courtesy copy of this decision is being mailed to the petitioner, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a “Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment.” However, petitioner may wish to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or an unavoidable petition under 37 CFR 1.137(a).

Further correspondence with respect to this matter should be delivered through one of the following mediums:

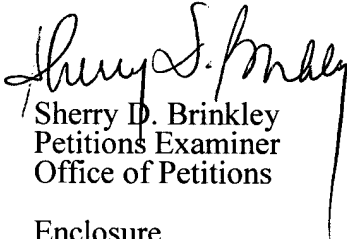
By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
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 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

By internet: EFS-Web¹

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Enclosure

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 4F-6, NO. 98 JIANZHONG ROAD
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¹ www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)